

OTC.9150

CAUSE NO. 07-03807-D

JOHN DOE I AND JOHN DOE II,
THROUGH HIS MOTHER AS
NEXT FRIEND OF JOHN DOE II,
A VULNERABLE (NON COMPOS
MENTIS) ADULT,

Plaintiffs,

VS.

REVEREND NICHOLAS E. KATINAS,
PASTOR (FORMERLY) OF HOLY
TRINITY GREEK ORTHODOX
CHURCH; HOLY TRINITY GREEK
ORTHODOX CHURCH; THE GREEK
ORTHODOX METROPOLIS OF DENVER
BY AND THROUGH BISHOP ISAIAH OF
DENVER IN HIS OFFICIAL CAPACITY,
AND THE GREEK ORTHODOX
ARCHDIOCESE OF AMERICA BY AND
THROUGH ARCHBISHOP DEMETRIOS
IN HIS OFFICIAL CAPACITY,

Defendants.

§ IN THE DISTRICT COURT

§ DALLAS COUNTY, TEXAS

§ 95TH JUDICIAL DISTRICT

**DEFENDANTS' SPECIAL EXCEPTIONS TO PLAINTIFFS'
ORIGINAL PETITION AND BRIEF IN SUPPORT**

TO THE HONORABLE JUDGE OF SAID COURT:

THE GREEK ORTHODOX METROPOLIS OF DENVER BY AND THROUGH BISHOP ISAIAH OF DENVER IN HIS OFFICIAL CAPACITY (“GREEK ORTHODOX METROPOLIS OF DENVER”) and HOLY TRINITY GREEK ORTHODOX CHURCH (“HOLY TRINITY”), some of the Defendants herein, file this their Special Exceptions and Brief in Support to Plaintiffs’

Original Petition, Request for Disclosure and Request for Jury Trial (“Original Petition”) on file herein, and in support thereof respectfully would show the Court as follows:

I.

Pursuant to the authority of TEX. R. CIV. P. 90 and 91, GREEK ORTHODOX METROPOLIS OF DENVER and HOLY TRINITY file the following special exceptions to Plaintiffs’ Original Petition and hereby challenge the sufficiency of those pleadings. In accordance with the requirements of TEX. R. CIV. P. 91, these special exceptions specifically point out the numerous defects, omissions, obscurity, duplicity, generality, and other insufficiencies of Plaintiffs’ Original Petition. Accordingly, these Defendants ask this Court to order the Plaintiffs to replead and provide that, if the Plaintiffs fail or refuse to amend, this cause will be dismissed with prejudice to the refiling of same.

II.

Defendants specially except to Plaintiffs’ Original Petition in general, and specifically to the use of pseudonyms by all three Plaintiffs (although the mother of John Doe II appears as next friend, she is never identified by name, only as mother). The Texas Rules of Civil Procedure do not authorize the use of fictitious names. In fact, the Rules mandate that all parties’ names be listed. Further, the use of pseudonyms violates the constitutionally embedded presumption of openness in judicial proceedings, the public’s right to know, the due process rights of the Defendants, and the Defendants’ ability to prepare an adequate defense. The use of pseudonyms should only be permitted in the most exceptional cases and there has been no showing by the Plaintiffs that this is such a case. Defendants are wholly unaware of any order or hearing on this matter. Additionally, since the Plaintiffs are seeking punitive damages, which are in the nature of a criminal punishment,

the use of fictitious names violates the confrontation clauses of the United States Constitution and the Texas Constitution. These Defendants have been accused publicly of serious charges and are at a serious disadvantage. Basic fairness mandates that the Plaintiffs be identified by name. Accordingly, these Defendants ask the Court to order the Plaintiffs to replead and list their actual identities/names and provide that, if the Plaintiffs fail or refuse to amend, this cause will be dismissed with prejudice to refiling of same.

III.

ARGUMENTS AND AUTHORITIES

A trial is a public event and the judiciary has no special prerequisite to suppress, edit, or censor events which transpire in proceedings before it. *Craig v. Harney*, 331 U.S. 367, 374 (1947). There is a general presumption that parties' identities are public information. *See America Online, Inc. v. Anonymous Publicly Traded Co.*, 542 S.E.2d 377, 384 (Va. 2001). As one court noted, it is axiomatic that lawsuits are public events and the public has a legitimate interest in knowing the facts involved, including the identity of the parties. *Doe v. Hallock*, 119 F.R.D. 640, 643 (S.D. Miss. 1987). This presumption of openness harks back to the English common law. *Doe I v. Merten*, 219 F.R.D. 387, 390 (E.D. Va. 2004) (long-standing common law presumption of openness also enjoys firm constitutional support in the form of settled precedent that emphasizes the role of First Amendment protections in safeguarding the public's right of access).

The Rules of Civil Procedure embrace these principles of disclosure. *See Rose v. Beaumont Indep. Sch. Dist.*, 240 F.R.D. 264, 265 (E.D. Tex. 2007); *Hallock*, 119 F.R.D. at 643; *America Online, Inc.*, 542 S.E.2d at 384. The Texas Rules of Civil Procedure follow suit. Rule 79 provides that the petition shall state the names of the parties and their residences. TEX. R. CIV. P. 79. Rule

99(b) provides that a citation shall show the names of the parties. TEX. R. CIV. P. 99(b). Even Rule 28, which permits suits by businesses or individuals doing business under an assumed name to sue or be sued in that assumed name, requires that upon motion of any party, the true name is to be substituted. TEX. R. CIV. P. 28. In fact, the rules of civil procedure, both state and federal, do not include provisions for parties wishing to proceed anonymously.

Courts also are concerned about the risk of unfairness to the defendant. *America Online, Inc.*, 542 S.E.2d at 384; *see also Doe v. Shakur*, 164 F.R.D 359, 362 (S.D. N.Y. 1996) (basic fairness dictates that plaintiffs who publicly accuse defendants use real names) . Defendants have an interest in knowing who is suing them. *Hallock*, 119 F.R.D. at 643.

Courts have permitted plaintiffs to proceed under fictitious names only in extraordinary and exceptional cases. *Doe v. Frank*, 951 F.2d 320, 323 (11th Cir. 1992); *see also Hallock*, 119 F.R.D. at 643. Although there are no hard and fast rules for courts to follow when deciding this issue, certain factors have been suggested. Such factors include:

[W]hether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of sensitive and highly personal nature; whether identification poses a risk of retaliatory physical or mental harm to the requesting party or even more critically, to innocent non-parties; the ages of the persons whose privacy interests are sought to be protected; whether the action is against a governmental or private party and, relatedly, the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously.

James v. Jacobson, 6 F.3d 233, 238 (4th Cir. 1993); *see also Merten*, 219 F.R.D. at 391-92.

The types of cases in which plaintiffs have been permitted to proceed anonymously have included birth control cases, abortion cases, welfare cases involving illegitimate children, and cases

involving issues of homosexuality. *See America Online, Inc.*, 542 S.E.2d at 384. But as the Fifth Circuit noted, these cases all have shared certain characteristics. *Southern Methodist Univ. Ass'n of Women Law Students v. Wynne & Jaffe*, 599 F.2d 707, 713 (5th Cir. 1979). The plaintiffs in those cases at the very least divulged personal information of the utmost intimacy. Many also had to admit that they either had violated state laws or government regulations or wished to engage in prohibited conduct. Furthermore, all of the plaintiffs in those cases were challenging the constitutional, statutory, or regulatory validity of government activity. *Id.*

What is clear from all of the cases that have discussed the issue is that the risk of embarrassment is not enough to justify allowing a plaintiff to proceed anonymously. *Femedeer v. Haun*, 227 F.3d 1244, 1246 (10th Cir. 2000); *Hollock*, 119 F.R.D. at 643 (plaintiff's desire to avoid embarrassment and unwanted invasion of personal privacy was not enough).

In *Rose v. Beaumont Indep. Sch. Dist.*, *supra*, the court analyzed a request to proceed under a fictitious name from a plaintiff who sued the school district alleging that she was forced to engage in oral sex with male athletes. The court ultimately held that she must proceed under her real name. In reaching this decision, the court analyzed the factors and tests set out above. The court first noted that the plaintiff was suing a private defendant, and there was no challenge to government activity. 240 F.R.D. at 267. The court then reviewed the argument that the case involved matters of the utmost privacy and intimacy. While the court was sympathetic to the plaintiff, it found that she had not presented a case so compelling as to permit her to proceed anonymously. *Id.* The court then noted that the nature of the claim did not involve any admission on the part of the plaintiff that she was engaged in any illegal activity or that she would be violating any laws in the future. *Id.* The court then found that basic fairness dictated that the defendant's accuser must be willing to

participate under her own name. *Id.* Finally, in considering other factors, the court noted that the plaintiff was no longer a minor, had not shown any threat of violence, and had helped promote media coverage of the case. *Id.* at 268.

The courts almost unanimously have held that civil cases involving claims of sexual assault, where the alleged victim is not a minor at the time of filing, do not involve the type of extraordinary circumstances justifying the use of pseudonyms or fictitious names by the plaintiff. *See, e.g., Rose v. Beaumont Indep. Sch. Dist.*, 240 F.R.D. at 268 (victim of sexual abuse at school was not allowed to proceed under pseudonym; court noting that plaintiff was no longer a minor at time suit filed); *Doe v. Shakur*, 164 F.R.D at 362 (claims of public humiliation and embarrassment by victim of sexual assault were not sufficient grounds for allowing plaintiff in civil suit to proceed anonymously); *Doe v. Bell Atlantic Business Sys. Servs., Inc.*, 162 F.R.D. 418, 422 (D. Mass. 1995) (in sexual harassment suit, plaintiff who was concerned she might have been infected with HIV virus as the result of alleged sexual assault was not permitted to proceed under a pseudonym); *Doe v. University of Rhode Island*, 1993 WL 667341, at *3 (D. R.I. 1993) (student who was sexually assaulted not permitted to proceed under pseudonym).

As previously noted, the Texas Rules of Civil Procedure provide no avenue for proceeding anonymously. In fact, Texas law only provides for limited use of pseudonyms. *See* TEX. CODE CRIM. PROC. ANN. art. 57.01 (Vernon 2006) (providing for use for victims of sexual offenses in criminal cases); TEX. FAMILY CODE ANN. § 102.008(b)(2) (Vernon 2002) (may omit name of child in adoption proceeding). Courts also have permitted pseudonyms in cases involving juveniles.

All of the foregoing authorities make it clear that this case does not involve one of the rare exceptional circumstances under which a plaintiff can proceed under a pseudonym or fictitious name.

These Defendants have been subjected to public accusal. Basic fairness dictates that the Defendants' accusers must act under their real names.

CONCLUSION

The Plaintiffs have chosen to bring this lawsuit involving serious charges that put their credibility at issue. They should stand behind the charges publicly. Second, this is a civil suit for damages, not a criminal proceeding. Third, these Defendants have been publicly accused. Finally, the public's right to access demands that the Plaintiffs proceed in their own names.

In the absence of knowing the identity of their accusers, Defendants are deprived of fair notice, have their constitutional rights violated, and permitting same involves this Court in violating the public's legitimate interest in knowing the facts involved, including the identity of the parties and the presumption of openness in the judiciary system. If the Plaintiffs fail to file a curative amendment, they must suffer the consequences of dismissal. *See Portugal v. Jackson*, 647 S.W.2d 393, 394 (Tex.App.—Waco 1983, writ rer'd n.r.e.). These Defendants request that Plaintiffs be required to amend their pleadings and provide their real names and identities, or suffer the dismissal of all their claims.

WHEREFORE, PREMISES CONSIDERED, GREEK ORTHODOX METROPOLIS OF DENVER and HOLY TRINITY, Defendants herein, pray that this Court sustain their special exceptions to Plaintiffs' Original Petition, striking said pleadings and/or ordering Plaintiffs to amend their pleadings accordingly, and for such other and further relief to which Defendants justly may be entitled.

Respectfully submitted,

FLETCHER & SPRINGER, L.L.P.

BY: 

DOUGLAS D. FLETCHER

State Bar No. 07139500

RICHARD G. MILLER

State Bar No. 14107500

8750 N. Central Expressway, Suite 1600

Dallas, Texas 75231

(214) 987-9600 (office)

(214) 987-9866 (telecopier)

**ATTORNEYS FOR DEFENDANT THE GREEK
ORTHODOX METROPOLIS OF DENVER BY AND
THROUGH BISHOP ISAIAH OF DENVER IN HIS
OFFICIAL CAPACITY AND HOLY TRINITY GREEK
ORTHODOX CHURCH**

CERTIFICATE OF SERVICE

THIS WILL CERTIFY that a true and correct copy of the foregoing instrument has been mailed, telecopied, or hand delivered to all attorneys of record in this cause of action on the 6 day of June, 2007.



RICHARD G. MILLER